SUPREME COURT OF THE UNITED STATES.

No. ~~123~~ 33.

AMOS BINNEY, PLAINTIFF IN ERROR,

VERSUS

THE CHESAPEAKE AND OHIO CANAL COMPANY.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

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DISTRICT OF COLUMBIA, sct.

Style of court. At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the first Monday of December, being the fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States of America, the 56th,

Were present:

The Hon'ble { WILLIAM CRANCH, Chief Judge, BUCKNER THRUSTON, & JAMES S. MORSELL, } Ass't Judges.
HENRY ASHTON, esq., Marshal.
WILLIAM BRENT, Clerk.

In the record of proceedings of the same court, among others, are the following, to wit:

Ohio Canal Company shall take no advantage thereof, but shall pay to the said Peter Denn, lessee as aforesaid, his costs, &c.

And it is further ruled by the court here, that if, upon the trial of the said issue, a verdict shall be given for the said Chesapeake and Ohio Canal Company, or if the said Peter Denn, lessee as aforesaid, shall not prosecute his declaration upon any other cause than for the not confessing lease, entry and ouster as aforesaid, then the said Amos Binney, lessor of the aforesaid Richard Fenn, shall pay costs, &c.

C. & O. Canal's defence on title.

And thereupon, the said Chesapeake and Ohio Canal Company, by their said attorney, defends the force and injury, when and so forth, and take their defence of, and upon, the premises in question, upon their title thereto, and say they are not guilty of the trespass and ejectment in the said declaration mentioned, in manner and form as the said Peter Denn, lessee as aforesaid, above complains, and of this they put themselves upon the country, &c., and the said Peter Denn, lessee as aforesaid, in like manner, &c.

Thereupon, the following statement of facts was filed by consent of the parties aforesaid, by their attorneys aforesaid, and by order of the court, subject to the opinion of the court as to the law upon the facts.

AMOS BINNEY,
vs.
CHES. & OHIO CANAL CO. } *Ejectment.*

Amended nar.

Nar. amended by adding a demise from J. K. Smith, and a demise from the heirs of Amos Cloud, (their names to be left blank, or considered as proper inserted in the record,) and another from Jno. Way.

Statement of facts subject to the opinion of the court as to the law.

The plaintiff's title depends on the title papers herewith shown to the court, the due authentication of which is admitted, viz., the patents for Amsterdam and White Haven, and the several mense conveyances, decrees, &c., from the patentees down to the plff's; and it is admitted that the plaintiff's lessor, J. K. Smith, was in possession, in June, 1812, when the condemnation hereinafter mentioned, was made of the land comprized within said condemnation, and that it is a part of the said two tracts of land.

It is admitted that the Potomac Company, in the year 1793, condemned certain lands, as appears by their said inquisition and condemnation, and plot hereto annexed, for their canal and locks through the aforesaid tracts of land, and other adjacent tracts as noted on said plot.

And it is admitted, that, on the 23d June, 1812, an inquisition was held and condemnation had by said company, as appears by the papers hereto annexed—and it is admitted that the location of the land, so last condemned, and the new locks erected thereon, and the old locks erected on the land condemned as aforesaid, in 1793, is truly shewn by a plot thereof, made out by Tho's F. Percell and William Bussard, hereto annexed.

And it is further admitted, that the Potomac Company, after said respective condemnations, entered upon the lands so con-

demned, and erected thereon the locks as shown in the said plot, and continued in possession until transferred to the defendants, the Chesapeake and Ohio Canal Company, which latter company have continued in possession ever since.

Upon which case agreed, it is submitted to the court to say, 1st. Whether the plaintiff has shewn title? and 2d. Whether the condemnation of 1812 aforesaid, divested the plaintiff's title, and gave a valid title to the Potomac Company?

It is agreed that all the papers, plots, &c., mentioned and referred to in the aforegoing case agreed, may be omitted in the record of this case, and may be used in the Supreme Court as if contained in the record.

F. S. KEY, *for plff.*
THO. SWANN, *for defts.*

Judgment for defendants.

Whereupon, all and singular the premises being by the court here seen, heard, and fully understood, and mature deliberation thereon had, for that it appears to the court here, that the said condemnation gave a valid title to the Potomac Company to the lands therein described, and the said Chesapeake and Ohio Canal Company, are in nothing guilty of the trespass and ejectment aforesaid, as they above in pleading have alleged. Therefore, it is considered by the court here, that the said Peter Fenn, lessee as aforesaid, take nothing by his declaration aforesaid, but be in mercy for his false clamor thereupon. And it is further considered by the court here, that the said Chesapeake and Ohio Canal Company recover against the said Amos Binney, the sum of by the court here on their assent adjudged unto the said Chesapeake and Ohio Canal Company, for their costs and charges, by them, about their defence in this behalf laid out and expended, and that they have thereof execution.

Test: WILLIAM BRENT, *Clerk.*

And whereas, afterwards, to wit, on the 18th day of January, in the year of our Lord one thousand eight hundred thirty-two, the said Amos Binney, by his attorney aforesaid, produced and filed in court here, the United States' writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, in the county of Washington: and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereto relating, with the writ of error aforesaid, hereto annexed, is hereby transmitted to the said Supreme Court accordingly. (Appeal bond dispensed with by consent.)

In testimony whereof, I have hereto subscribed my name, and affixed the public seal of the said circuit court for the county aforesaid, this twentieth day of January, 1832.

WM. BRENT, *Clerk.* [L. S.]

Writ of error. UNITED STATES OF AMERICA, ss.—*The President of the United States to the judges of the circuit court of the United States for the District of Columbia, sitting for the county of Washington, greeting:*

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Peter Denn, lessee of Amos Binney, plaintiff, and the Chesapeake and Ohio Canal Company defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf: do command you, if judgment be therein given, that, then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the
next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and the custom of the United States, should be done.

Witness, the honorable John Marshall, Chief Justice of the said Supreme Court.

Issued this eighteenth day of January, 1832.

WM. BRENT,
Clk. of Ct. Ct. of D. Ca. for co'ty of Wash.

Citation. UNITED STATES OF AMERICA, *District of Columbia, Washington county, ss:—To the Chesapeake and Ohio Canal Company, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the Monday of next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the District of Columbia, in the county of Washington, wherein Peter Fenn, lessee of Amos Binney, was plaintiff, and you are defendant, to show cause, if any there be, why judgment rendered against the said plaintiff, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Cranch, chief judge of the circuit court for the District of Columbia, this eighteenth day of January, 1832.

Service acknowledged by Mr. Swann, the attorney for the defendant.